IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 190 of 2004

Asgar Ali S/o Maksood Ali,
R/o Village Jainpur Jhanjedi,
Pargana Mangalore,
Tehsil Roorkee, District Haridwar. ….. Appellant

Versus

1. Dr. Mohan Lal Gupta S/o Om Prakash Gupta,
   R/o City Center Road, Yamuna Nagar,
   Haryana, Owner of Omni Ambulance
   X-L,Uro-2, No. HR 02-4610.
2. The Oriental Insurance Company Ltd,
   Jagdhari through its Branch Manager,
   The Oriental Insurance Company Ltd.,
   Haridwar. ……. Respondents

Mr. Bipin Mohan Pingal, Advocate for the appellant.
None for respondent No.1.
Mr. M.K. Goyal, Advocate for respondent No. 2.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

RAJEEV GUPTA, C.J. (Oral)

This is claimant's appeal filed under Section 173 of the Motor Vehicles Act for enhancement of the compensation awarded by Motor Accident Claims Tribunal / Addl. District Judge, Roorkee, District Haridwar vide Award dated 20.03.2004 passed in M.A.C.T. No. 75 of 2002.

2. Claimant Asgar Ali claimed compensation of Rs. 14,40,000/- for the injuries sustained by him in the motor accident on 11.03.2002 when the Ambulance bearing registration No. HR 2H-4610, in which the claimant was taking his ailing relative Shabir for treatment from Roorkee to Meerut, met with an accident due to the rash and negligent driving of its driver and overturned resulting in serious injuries to the claimant. The claimant pleaded that he spent more than

Rs. 1,00,000/- on his treatment and on account of the injuries sustained by him in the accident resulting in permanent disability to the extent of 55%, he has been rendered unfit to pursue his occupation as an Agriculturist resulting in monetary loss to him.

3. The owner and the insurer of the Ambulance contested the claim and denied their liability to pay compensation to the claimant. The owner of the Ambulance took the plea that the accident did not occur due to the rash and negligent driving of the driver of the Ambulance. The insurer of the Ambulance, on the other hand, took the plea that the Ambulance was being plied in breach of the policy conditions and the driver of the Ambulance was not holding a valid driving license.

4. The claimant examined himself as PW1 in support of his claim, whereas the owner of the Ambulance examined DW1 Billu.

5. The Tribunal, on the evidence led by the parties, held that claimant Asgar Ali sustained injuries in the accident on 11.03.2002; those injuries in permanent disability to the extent of 55%; the accident occurred due to the rash and negligent driving of the driver of the Ambulance; and the insurer of the Ambulance was liable to pay compensation to the claimant.

6. Considering that the injuries sustained by the claimant resulted in permanent disability to the extent of 55%, the Tribunal awarded Rs. 74,100/- towards Permanent Disability and Rs. 1,70,626/- towards Medical Expenses. Thus, a total sum of Rs. 2,44,726/- was assessed as compensation payable to the claimant. (There is an apparent mistake in the calculation of the compensation by the Tribunal in the Award, as the total of the above sums awarded by the Tribunal under the head of Loss of Earning Capacity / Permanent Disability and Medical Expenses comes to Rs. 2,44,726/- and not Rs. 2,49,626/- as mentioned by the Tribunal in the Award.) The Tribunal, further,

directed the insurer of the Ambulance to pay interest at the rate of 6% per annum from the date of the application on the amount of compensation.

7. Mr. Bipin Mohan Pingal, the learned counsel for the appellant submitted that the Tribunal has erred in not awarding any sum towards Conveyance Charges; Pain and Suffering; and Loss of Income during the period the claimant remained hospitalised. The learned counsel further submitted that the Tribunal has erred in assessing the compensation on the basis of the formula under the Workmen's Compensation Act and not applying the multiplier system prescribed in the Second Schedule under the Motor Vehicles Act.

8. Mr. M.K. Goyal, the learned counsel for the insurer of the Ambulance, on the other hand, supported the Award and submitted that the compensation of Rs. 2,44,726/- awarded by the Tribunal is just and proper compensation in the case.

9. The findings recorded by the Tribunal that claimant Asgar Ali sustained injuries in the motor accident on 11.03.2002; those injuries resulted in permanent disability to the extent of 55%; the accident occurred due to the rash and negligent driving of the driver of the Ambulance; and the insurer of the Ambulance was liable to pay compensation to the claimant have, now, attained finality as the respondents have not filed any appeal against the Award.

10. True, the injuries sustained by the claimant in the accident resulted in permanent disability to the extent of 55%, as has been certified by the medical board. The claimant, being an Agriculturist, after sustaining the injuries in the accident resulting in permanent disability to the extent of 55% will never be able to pursue his

occupation as an Agriculturist with the same efficiency as he was doing before the accident.

11. The learned counsel for the appellant vehemently argued that the Tribunal has erred in assessing the compensation towards the Permanent Disability on the basis of the formula under the Workmen's Compensation Act and the same ought to have been assessed on the basis of multiplier system prescribed in the Second Schedule under Section 163-A of the Motor Vehicles Act.

12. Be that as it may, the fact remains that the Tribunal has awarded a sum of Rs. 74,100/- towards the Permanent Disability suffered by the claimant on account of the injuries sustained in the accident to the extent of 55%. In our opinion, a sum of Rs. 74,100/- towards Permanent Disability to the extent of 55% suffered by the claimant, who is an Agriculturist, cannot be said to be 'inadequate' so as to warrant enhancement in this appeal.

13. The sum of Rs. 1,70,626/- awarded by the Tribunal towards Medical Expenses, too, cannot be found fault with as the bills and vouchers submitted by the claimant before the Tribunal were to the extent of Rs. 1,70,626/- only. We, therefore, affirm the grant of Rs. 1,70,626/- by the Tribunal towards Medical Expenses.

14. We, however, notice that Tribunal has not awarded any sum towards Conveyance Charges; Pain & Suffering: and Loss of Income, which the claimant suffered during the period he remained hospitalised on account of the injuries and the fracture of his leg in the accident. We, therefore, award Rs. 5,000/- towards Conveyance Charges; Rs. 5,000/- towards Pain & Suffering; and Rs. 5,000/- for Loss of Income.

15. Thus, the claimant, in all, becomes entitled to receive a total compensation of Rs. 2,59,726/- (Rs. 1,70,626/- towards Medical Expenses + Rs. 74,100/- towards Permanent Disability + Rs. 5,000/- for Loss of Income + Rs. 5,000/- for Pain & Suffering + Rs. 5,000/- for Conveyance Charges).

16. For the foregoing reasons, the appeal filed by the appellant under Section 173 of the Motor Vehicles Act for enhancement of the compensation is allowed in part. The compensation of Rs. 2,49,626/- awarded by the Tribunal is enhanced to Rs. 2,59,726/-. We quantify the amount of interest on the enhanced amount of Rs. 10,100/- at Rs. 1,000/-. Respondent No. 2 The Oriental Insurance Company Ltd. is directed to pay Rs. 11,100/- (the enhanced amount of Rs. 10,100/- and the amount of interest of Rs. 1,000/-) to the claimant within a period of two months from today.

17. No order as to costs.

(Rajesh Tandon, J.) **(Rajeev Gupta, C.J.)**
20.09.2006 20.09.2006

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